

Prosecuting Attorneys' Council of Georgia

CaseLaw UPDATE

WEEK ENDING MARCH 28, 2008

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THIS WEEK:

- Evidence – Perpetrator Someone Else
- Evidence – Videotape
- Double Jeopardy
- Search and Seizure

Evidence – Perpetrator Someone Else

Dawson v. State, S07A1253

Appellant was convicted of four murders in Fulton County, and the State sought the death penalty. The jury returned a verdict of life without parole. On appeal, appellant argues that the trial court erroneously prohibited him from presenting evidence that the four murders were actually committed by a drug-dealing gang who planted evidence incriminating the appellant because he had purportedly snitched on the gang. The Supreme Court of Georgia held that the trial court was correct in excluding the proffered evidence. Appellant did not connect a specific person to the crimes, and his evidence did not raise a reasonable inference of his innocence.

Evidence – Videotape

Dawson v. State, S07A1253

Appellant was convicted of four murders in Fulton County, and the State sought the death penalty. The jury returned a verdict of life without parole. Appellant claims that a video tape was improperly admitted at trial, and that it was improper to allow a non-expert

witness to give an opinion regarding the identity of the person on the tape.

The Supreme Court of Georgia held that the tapes were properly admitted under O.C.G.A. §24-4-48. The time on the video was off by 104 minutes, and there was no one able to directly authenticate the tape. However, the court was correct in admitting the evidence as those issues went to weight and not admissibility.

Appellant further claims that O.C.G.A. § 24-9-65 was violated when a non-expert witness was permitted to identify an individual from a video. The trial witness had known appellant for 20 years and attended a pro football game with appellant the day after the murders. The witness testified that appellant looked different than he previously had and that the mannerisms of the person in the video were similar to that of appellant. Because the witness was familiar with the appellant's appearance, he had personal knowledge that the appellant's appearance had changed. The testimony was proper and the conviction affirmed.

Double Jeopardy

State v. Jackson, A07A2234

The State appeals from a trial court order granting appellee's plea in bar and plea of former jeopardy in a burglary case. Appellant was charged with one count of burglary in a multi-count, multi-defendant indictment. During trial, the State realized that the evidence presented did not conform to the indictment because it showed a different residence, date, and accomplice than alleged in the indictment. The State moved to nolle prosequi the case over objection of the defense, and the motion was granted. The State obtained a new indictment. Appellant filed a

plea in bar and plea of former jeopardy, which were granted by the trial court.

The Court of Appeals held that the trial terminated improperly under O.C.G.A § 16-1-8 because the court may not enter a nolle prosequi order without the defendant's consent after jeopardy has attached. Since the facts alleged in the new indictment were the facts presented at trial, this was a case based upon the same material facts. Therefore, the ruling of the trial court was upheld and jeopardy had attached.

Search and Seizure

State v. Palmer, A07A233

The State appeals the trial court's grant of appellee's motion to suppress drugs and other evidence seized during a search of his home. At the hearing, the evidence showed that a CI called the City of Atlanta and claimed that two men were selling crack out of a particular apartment. The police set up a controlled buy with the informant. The informant approached the apartment and returned in under a minute with a gram of cocaine. The informant reported that he purchased the cocaine from a man in a wheelchair. The search warrant for the apartment did not disclose that the informant had a criminal record and provided that the informant was reliable without any basis for the conclusion. A magistrate signed a no-knock warrant. Crack, marijuana, scales, bags, and cash were all recovered from the appellee's residence.

Appellee moved to suppress the evidence. Appellee claimed that the information provided lacked reliability and did not give probable cause. After the hearing, the trial court denied the motion. Appellee filed a motion for reconsideration. After additional oral argument, but no new evidence, the trial court granted the motion. Appellee claimed that suppression was required because Officer Ries did not give information in the affidavit to allow for the magistrate to determine the reliability of the informant. The State contends that there was enough evidence to establish probable cause. Specifically, the State points to the controlled buy and resulting physical evidence. After reviewing the evidence, the Court did not find that the evidence demanded a conclusion that the search warrant was supported by probable cause. Therefore, the trial court was not clearly erroneous and the grant of the motion was affirmed.

State v. Goodman, A07A2508

The State appeals the grant of appellee's motion to suppress. Detective Schiffbauer spoke to an individual at the jail who informed him that appellee was selling drugs from his home on Carlisle Way. An investigation a year earlier into appellee by the same detective indicated that appellee also sold drugs from various hotels throughout metro Atlanta. Investigator Roberson went with Schiffbauer and Investigator Smart to the appellee's home to conduct a controlled buy. Roberson was allowed into the condo by John Delgado, a house guest. Appellee, Michael Bland, and John Delgado were all present at the condo watching pornographic movies. Suspected drugs were on the table. Roberson told appellee they partied with mutual friends and that he wanted to purchase \$100 worth of cocaine. Roberson became convinced that appellee was not going to sell him the cocaine and gave the signal for the other detectives to enter the apartment.

The detectives knocked on the door. Bland quickly shut it and stated that the police were present. As Bland walked away from the door, Roberson stated that the two men were his ride, unlocked the door, and let them in. All the people inside the apartment were arrested. A search warrant was obtained. The general rule is that a law enforcement officer's entry into a home without a search warrant and without consent or exigent circumstances constitutes an unjustified, forcible intrusion that violates the Fourth Amendment. The Court held that there was nothing in the record to indicate appellee ever consented to Roberson's entry into his home or that Delgado was authorized by appellee to allow entry. Therefore, the trial court correctly concluded that Roberson's entry into appellee's home violated the Fourth Amendment.